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SUBJECT: IPR IN YEMEN: NEW LAWS AND ENHANCED ENFORCEMENT NEEDED

REF A 03 Sanaa 2776

1. Summary. Intellectual Property Rights Laws in Yemen need to be updated to meet Trade Related Aspects of Intellectual Property Rights Standards (TRIPS), and existing laws should be enforced. Although it is not a major transit point or purchaser for illicitly produced goods and is not on USTR Special 301 watch list, Yemen does not have adequate IPR laws. The Ministries charged with enforcing IPR regulations suffer from poorly trained staff and offer little incentive to pursue IPR violations. End Summary.

2. Yemen is not on USTR's Special 301 Watch List as a country of concern for Intellectual Property Rights violations. The amount of smuggled and pirated goods is growing, however, and illegal copies of software, DVDs and music can be purchased at some stores in major cities. At this time, Post is unaware of any pirated goods being produced illegally in Yemen. Most pirated products are likely smuggled from other countries and sold in Yemen. Due to Yemen's extreme poverty, however, the market for such items is limited.

"Tite" Still on Shelves

3. The Tide/Tite issue (Ref A) is a case-study on the failure of IPR enforcement in Yemen. Proctor and Gamble (P&G) initiated court proceedings against the local manufacturer of Tide laundry detergent in 1999 for violating their Tide patent. Having won three cases (including a Supreme Court ruling in 2003), Tide laundry detergent is still on supermarket shelves and P&G is in private arbitration talks. Continued discussions with the Ministry of Industry's Office of Patent Enforcement have produced no effective response. In the Tide case, Yemen's laws worked (albeit slowly), but the Supreme Court's decision was not enforced and there is no political will to resolve this outstanding IPR issue.

New IPR Legislation Needed

4. Yemen's IPR laws are not WTO compliant and legislation designed to address many Trade Related aspects of Intellectual Property Rights Standards (TRIPS) languishes in Parliament. Yemen's patent, industrial design, and copyright laws all must be revised to meet international standards. The U.S. submitted several specific questions on Yemen's Memorandum of Foreign Trade Regime aimed at TRIPS compliance for patent and copyright laws. The Ministry of Culture and Tourism submitted to Parliament an amended copyright law that addressed specific concerns over software piracy and is TRIPS compliant, but Parliament still has not ratified the adjustments. Gaps such as geographical indicators, topographies (integrated circuits layout), undisclosed information (especially those related to trade secrets), and anti-competitive behavior in contractual licenses

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still need to be addressed in future legislation.

Who Controls What?

5. The Ministry of Industry and Trade (MIT) controls patents and trademarks. The World Intellectual Property Organization provided computers and other English language training for Patent officers. Four IPR departments reside in MIT: Patents and Industrial Designs; Trademark Registration; Trademark Depository; and Public Awareness. The offices suffer from lack of English training, limited awareness of IPR trends and insufficient equipment to carry out their functions.

6. The Ministry of Culture and Tourism enforces copyright laws. The Ministry is less adept at enforcing its laws than MIT and suffers from inadequate resources. Executives from Microsoft along with the private NGO the Business Software Alliance are lobbying the ROYG to adopt the changes to the copyright laws concerning software piracy. If such a law is drafted, Microsoft will open an office in Yemen. Enforcement of the laws falls to Ministry of Interior and Customs, with little interaction, except

if encouraged by companies.

17. In July, President Saleh announced an anti-smuggling initiative aimed at fighting software piracy and asked Yemen's Chamber of Commerce to raise awareness regarding the problem. Post has seen no movement to extend enforcement, take readily available pirated software off the shelves, or pass legislation to enhance enforcement.

Untrained Officials Enforcing Little Understood Laws

18. Judges and prosecutors lack training to prosecute IPR cases. Cases take years to wind their way through Yemen's judicial systems; decisions, as in the Tide case, are not enforced. Further complicating the situation in Yemen is the combination of laws from both the former South and North. Judges from the South often did not receive training in the new commercial laws they are required to enforce. The ROYG is taking small steps to address the problem and is looking at upgrading the commercial courts in both Sanaa and Aden to meet business needs.

19. Companies who bring IPR complaints to various ministries receive attention, but the ministries charged with enforcing IPR laws do not take action. Several businessmen note that once they inform the Customs Authority of a problem, officials are helpful and usually act to seize goods. On the flip side, there seems little political will to initiate cases of IPR enforcement.

New Laws, Enhanced Enforcement Equals Revenue

110. Comment: With declining oil revenues and high unemployment, even small steps toward improving Yemen's investment climate are important to encourage foreign investment. Until now, the IPR message is usually linked to the far off WTO accession goal and not the fact that expanded IPR protections will directly benefit Yemenis. The pitch for expanded IPR enforcement and new laws should focus on the benefits of job creation and expanded tax revenue Yemen would receive should they take necessary steps toward WTO accession. End Comment.